THE HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.10442 of 1999

Dated: February 27,2006

Between:

Sridevi Fishermen Cooperative Society Limited,
Registered No.B-144, Pasalapudi Village,
Rayavaram Mandal, East Godavari District,
represented by its President, Tekumudi Gurraiah.

… Petitioner

And

Government of Andhra Pradesh, represented by
its Principal Secretary, Animal Husbandry and
Fisheries Department, Secretariat, Hyderabad,
and three others.

… Respondents

Order:

This Writ Petition has been filed seeking Writ of Mandamus to declare the order dated 07-06-1999 passed in Memo No.15-263/Fish.II (1)/98-9 by the first respondent-Government / revisional authority, in exercise of powers under Section 77 of the Andhra Pradesh
Co-operative Societies Act, 1964 ('the Act' for brevity) as illegal, contrary to law and without jurisdiction.

2. The third respondent Fishermen Cooperative Society was registered on 02-12-1975 as per the provisions under the Act with an area of operation extending nine (9) villages, viz. Chelluru, Pasalapudi, Kurmapuram, Vella, Venturu, Machavaram, Kurakulapalli, Utrumilli and Pamarru. On the ground that the President of the Managing Committee of the third respondent-Society was not allowing admission of fishermen from Pasalapudi village, representations were made for deletion of Pasalapudi from the area of operation, so as to form a separate society of fishermen in Pasalapudi village. Initially, on the representation of the fishermen of Pasalapudi village, proceedings were initiated for amending the Byelaws for deletion of the area of operation, under Section 16 of the Act. But, subsequently, proceedings were taken up under Section 15 of the Act and enquiry was initiated. After calling for the reports from the Fisheries Development Officer, Rampachodavaram, and also taking into account of the opinion of the three-men committee constituted by the Commissioner of Fisheries, final orders dated 15-01-1998 were passed in Notification No.2264/F/96, by the Assistant Director of Fisheries, Kakinada, the second respondent herein, deleting Pasalapudi from the area of operation of the existing third respondent Society, i.e.
Sri Rama Fishermen Cooperative Society Limited, Chellur. Consequently, the petitioner-Society was provisionally registered on 24-02-1998 and final Certificate of Registration was issued on
28-02-1998.

3. As against the order dated 15-01-1998, the third respondent-Society filed revision petition under Section 77 of the Act, before the first respondent-Government. On the said revision petition, the impugned order dated 07-06-1999 came to be passed allowing the revision petition filed by the third respondent. Mainly, the said revision petition was allowed the by the first respondent-Government, on the ground that the water spread area available in the area of operation of the third respondent-Society

will not permit admission of any new members. Further, a finding was recorded that any deletion of the area of operation of the fishermen Co-operative Society, Chellur, will adversely affect the interest of the members of the fishermen Co-operative Society, Chellur. But, however, in the operative portion, there is no reference to the orders dated
15-01-1998 of the Assistant Director of Fisheries, setting aside the said order.

4. In this Writ Petition, learned counsel for the petitioner,
Mr. M. V. Durga Prasad, submits that the revision petition filed by the third respondent under Section 77 of the Act, is not maintainable as much as there is a substantive remedy of appeal against the orders of the Assistant Director of Fisheries to the appellate authority under Section 76 of the Act. He further submits that the revisional authority has passed the impugned order contrary to the material on record and also without giving proper opportunity.

5. On the other hand, learned Senior Counsel Mr. N. Subba Reddy, appearing for the third respondent-Society, submits that in this case, though there is a provision for appeal under Section 76 of the Act, such an appeal remedy was not available at that point of time against the orders passed under Section 15 (1) of the Act. The learned counsel further submits that appeals are provided against the order passed under Section 15 (1) of the Act, only in view of the amendments effected to the provisions under Section 76 of the Act, by virtue of Act 22 of 2001. As such, revision petition was the only remedy available to the third respondent at that point of time.
He further submits that the revisional authority has issued notice to the affected parties and on hearing the counsels on both sides, orders were passed by examining the viability of the third respondent-Society, in case Pasalapudi is deleted from the area of operation of operation of the third respondent-Society.

6. With regard to the above said rival contentions, in this case,
it is to be seen that there is a provision for appeals under Section 76 of the Act, but appeals were provided only against certain orders, passed under various sections. Prior to Act 22 of 2001, there was no appeal provided under Section 76 of the Act, against the orders passed by the Assistant Director of Fisheries, under Section 15 of the Act. In that view of the matter, the submission of the learned counsel for the petitioner that the revision petition filed by the third respondent-Society is not maintainable, cannot be accepted.

A perusal of the record also reveals that parties were heard and they were represented by their counsel before the revisional authority. Even, on the last date of hearing, notice was issued to the counsel on record; in that view of the matter, it cannot be said that no opportunity was given. But, however, coming to the merits of the case, mainly the order of the Assistant Director of Fisheries was challenged on the ground that if Pasalapudi is deleted from the area of operation, with the left over area of operation, it is not viable for the third respondent-Society to continue its business. Further, it is to be noticed that, on the applications made by the fishermen hailing from Pasalapudi village, the Commissioner of Fisheries, Hyderabad, has constituted a three-men committee, which visited Pasalapudi and Chelluru villages on 18-07-1997 and reported that organization of a separate fishermen Co-operative Society at Pasalapudi Village, would not adversely affect the interest of the parent society, i.e. the third respondent-Society. In addition to the same, even the Fisheries Development Officer, Rampachodavaram, also earlier appears to have submitted a detailed report, recommending for organization of a separate society, along with viability and feasibility reports.

A reading of the order passed by the Assistant Director of Fisheries dated 15-01-1998 reveals that such reports were made basis for passing the order for reorganizing the societies and for deletion of Pasalapudi from the area of operation. It is also relevant to note that after Pasalapudi was deleted from the area of operation, by the order of the Assistant Director of Fisheries dated 15-01-1998, a separate society was registered and provisional Certificate was issued on 24-02-1998, and final Certificate of Registration was also issued on 28-02-1998. Though the revisional authority has recorded a finding that the area of operation of the erstwhile third respondent-Society will not permit admission of new members, but however, there is no reference to any of the reports which were taken note of by the primary authority. The three-men committee, which was constituted for the specific purpose of visiting the villages of Pasalapudi and Chelluru, has opined that the deletion of Pasalapudi from the area of operation and formation of a separate society would not adversely affect the interest of the parent society, i.e. the third respondent-Society. Even the Fisheries Development Officer, Rampachodavaram, also appears to have submitted a report to the same effect, but, however, curiously, the revisional authority has not recorded any finding on the said aspects, by taking note of the reports as taken by the primary authority. Further, though revision petition was filed against the order of the Assistant Director of

Fisheries, dated

15-01-1998, but, however, the revisional authority proceeded as if it was dealing with the order passed by the Director of Fisheries.

Even in the operative portion of the order, no reference is made and no specific finding is recorded with regard to the validity of the order dated 15-01-1998, passed by the Assistant Director of Fisheries.

The revisional authority also failed to take note of the crucial aspect, viz. the registration of the petitioner-Society subsequent to passing of orders dated 15-01-1998. In that view of the matter, as the revisional authority has not considered relevant aspects before arriving at the conclusion, evidently, it is a fit case to set aside the order of the revisional authority and remit the matter for re-consideration by the revisional authority to hear the parties afresh and pass a reasoned order on the revision petition filed by the third respondent.

7. In the result, the Writ Petition is allowed. The order dated

07-06-1999 passed by the revisional authority in

Memo No.15-263/Fish.II (1)/98-9, is set aside. The matter is remitted for re-consideration and fresh disposal by the revisional authority / Government within a period of two months from the date of receipt of a copy of this order. It is needless to observe that the revisional authority shall issue notice to all the parties concerned, including the applicants, who made applications for deletion of Pasalapudi from the area of operation, and at whose instance, proceedings were initiated and the order dated 15-01-1998 was passed, and also the counsel on record in the matter. No order as to costs.

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JUSTICE R. SUBHASH REDDY.

February 27,2006

MRR

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